108TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
108–484

PROVIDING FOR CONSIDERATION OF H.R. 4279, TO AMEND THE INTERNAL REVENUE CODE OF 1986 TO PROVIDE FOR THE DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS, H.R. 4280, HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2004, AND H.R. 4281, SMALL BUSINESS HEALTH FAIRNESS ACT OF 2004

MAY 11, 2004.—Referred to the House Calendar and ordered to be printed

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Ms. PRYCE of Ohio, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 638]

The Committee on Rules, having had under consideration House Resolution 638, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration in the House of H.R. 4279, To amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, and H.R. 4280, Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2004, and H.R. 4281, Small Business Health Fairness Act of 2004.

The rule provides for consideration of H.R. 4279, under a modified closed rule, providing one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule provides for consideration of the amendment in the nature of a substitute printed in part A of this report, if offered by Representative Rangel of New York or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in part A of this report. The rule provides one motion to recommit H.R. 4279 with or without instructions.

The rule further provides for consideration of H.R. 4280, under a closed rule, providing one hour of debate in the House with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 20

minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. The rule provides one motion to recommit H.R. 4280.

The rule further provides for consideration of H.R. 4281, under a modified closed rule, providing one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce. The rule provides for consideration of the amendment in the nature of a substitute printed in part B of this report, if offered by Representative Kind of Wisconsin or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in part B of this report. The rule provides one motion to recommit H.R. 4281 with or without instructions.

The rule further provides that in the engrossment of H.R. 4279 the clerk shall add the texts of H.R. 4280 and H.R. 4281 as passed by the House, as new matter at the end of H.R. 4279, and then lay on the table H.R. 4280 and H.R. 4281.

Finally, the rule provides that if H.R. 4279 is disposed of without reaching the stage of engrossment, H.R. 4280 shall be treated in the manner specified for H.R. 4279 and only H.R. 4281 shall be laid on the table.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 251

Date: May 11, 2004.

Measure: H.R. 4280, Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2004.

Motion by: Mr. Frost.

Summary of motion: To make in order and grant the appropriate waivers to the amendment offered by Representative Conyers, which requires that both an attorney and health care specialist submit an affidavit that the claim is warranted before a malpractice action can be brought, and imposes strict sanctions for attorneys who make any frivolous pleadings. Provides for mandatory mediation; a uniform statute of limitations; narrowing the requirements for punitive damage claims; and requires insurers to dedicate at least 50% of any savings resulting from the litigation reforms to reduce the insurance premiums that medical professionals pay. The substitute is limited to licensed physicians and health professionals for malpractice cases only. It does not include lawsuits against HMAS, insurance companies, nursing homes, and drug and device manufacturers. Establishes a national commission to evaluate the causes of rising insurance premiums. The commission will be instructed to consider whether the McCarran-Ferguson Antitrust exemption for Medical Malpractice insurers should be repealed and study the potential benefits of providing a Federal medical malpractice insurance program where insurance was unavailable or unaffordable.

Results: Defeated 4 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 252

Date: May 11, 2004.
Measure: H.R. 4280, Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2004.
Motion by: Mrs. Slaughter.
Summary of motion: To make in order and grant the appropriate waivers to the amendment offered by Representative Baird, which removes all references in the bill to pharmaceuticals and medical devices.
Results: Defeated 4 to 9.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 253

Date: May 11, 2004.
Measure: H.R. 4280, Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2004.
Motion by: Mr. McGovern.
Summary of motion: To make in order and grant the appropriate waivers to the amendments en bloc: #1, 2, 3, 5, 7, 8, 9, 10, 11, and 13.
Results: Defeated 4 to 9.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 254

Date: May 11, 2004.
Measure: H.R. 4281, Small Business Health Fairness Act of 2004.
Motion by: Mr. McGovern.
Summary of motion: To make in order and grant the appropriate waivers to the amendment offered by Representative Cardin, which allows small businesses to form health insurance purchasing pools that would purchase coverage through association health plans. The coverage offered by these plans would be exempt from state regulations affecting benefits and solvency requirements. Permits the governors of states, in which small group market reforms guarantee the availability of comprehensive coverage for small employers, to receive from the Department of Labor an exemption from laws permitting the establishment of Association Health Plans.
Results: Defeated 4 to 9.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 255

Date: May 11, 2004.

Measure: H.R. 4281, Small Business Health Fairness Act of 2004.

Motion by: Mr. McGovern.

Summary of motion: To make in order and grant the appropriate waivers to the amendment offered by Representative Tierney, which requires Association Health Plans to comply with state Patients Bill of Rights consumer protections. Specifically all AHPs must comply with state consumer protection laws that: require right to independent external review of coverage decisions; require direct access to OB/GYN and pediatricians without a referral; require prudent layperson decision making standards; require coverage of non-formulary prescription drugs in certain situations; require access to hospital emergency room treatment; and prohibit provider gag rules.

Results: Defeated 4 to 9.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 256

Date: May 11, 2004.

Measure: H.R. 4280, Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2004.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order and grant the appropriate waivers to the amendment offered by Representative Sandlin, which would require medical liability insurance carriers to reduce premiums to a rate that does not exceed 90 percent of the amount of the premium charged for a policy of identical coverage during calendar year 2002, in effect obliging at 10 percent premium rate reduction. In order to ensure that the mandated rollback does not compromise the carriers ability to realize a reasonable rate of return, the amendment would authorize the Secretary of Health and Human Services-in accordance with regulations promulgated pursuant to the amendment-to adjust the rate reduction in order to ensure that the carrier is able to realize a reasonable rate of return.

Results: Defeated 4 to 9.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

PART A—SUMMARY OF AMENDMENT TO BE MADE IN ORDER TO H.R. 4279

(Summary derived from information provided by the amendment sponsor.)

Rangel: Amendment in the Nature of a Substitute. Allows participants in an FSA to roll over up to $500 in unused benefits from one year to the next. Would not allow participants to transfer up to $500 in unused benefits from an FSA to a Health Savings Account (HSA). Offset by including tax provisions designed to elimi-

nate abusive transactions engaged in by Enron as recommended by the Joint Committee on Taxation and to prevent the avoidance of corporate tax by American corporations reincorporating overseas.

PART B—SUMMARY OF AMENDMENT TO BE MADE IN ORDER TO H.R. 4281

(Summary derived from information provided by the amendment sponsor.)

Kind/Andrews: Amendment in the Nature of a Substitute. Requires the Department of Labor to establish a small Employer Health Benefits Plan (SEHB) similar to the Federal Employees Health Benefits Plan (FEHB). Requires the Secretary to widely disseminate information about SEHB through the media, internet, public service announcements and other employer and employee directed communications. All employers with fewer than 100 employees during the previous calendar year shall be eligible to apply for coverage under SEHB. Requires employers to offer coverage to all employees who have completed three months of service. Employees working fewer than thirty hours a week are eligible for prorate coverage. Requires the Secretary to establish an initial open enrollment period and thereafter an annual enrollment period. Requires the Department to annually contract with state licensed health insurers to offer health insurance coverage in a state. Participating insurers shall remain subject to state laws applicable to the states in which they cover residents. All participating insurers must offer benefits equivalent to or greater than the options offered to federal employees. Employers joining SEHB must contribute at least 50% of premium costs. Employers with fewer than 25 employees shall be eligible for a coverage incentive discount of 5% to employers joining SEHB. In addition, small employers with fewer than 50 employees shall be eligible for a sliding scale premium subsidy for employees earning less than 200% of the poverty level (50% for firms under 10 employees, 35% for firms under 25 and 25% for firms under 50). Employee premiums for employees earning under 200% of poverty, adjusted for family size, shall be eligible for 100% subsidies for premium contribution over 5% of salary if not covered by another federal or state health insurance program. Up to $50 billion is authorized for appropriation to the Department to provide small employer health coverage subsidies in fiscal years 2004–2014 (in accordance with the FY2004 Budget Resolution).

PART A—TEXT OF AMENDMENT MADE IN ORDER TO H.R. 4279

Strike all after the enacting clause and insert the following:

TITLE I—DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS

SEC. 101. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

"(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

"(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be carried forward to the succeeding plan year of such health flexible spending arrangement.

"(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

"(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

"(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

"(B) the actual amount of reimbursement for such year under such arrangement.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

TITLE II—ENRON-RELATED TAX SHELTER PROVISIONS

SEC. 201. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 of the Internal Revenue Code of 1986 (relating to basis to corporations) is amended by adding at the end the following new subsection:

"(e) LIMITATIONS ON BUILT-IN LOSSES.—

"(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

"(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a)

and (b)) be its fair market value immediately after such transaction.

"(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

"(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

"(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

"(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

"(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

"(A) IN GENERAL.—If—

"(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

"(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

"(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

"(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.".

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) of such Code (relating to liquidation of subsidiary) is amended to read as follows:

"(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section

337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

"(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after the date of the enactment of this Act.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after the date of the enactment of this Act.

SEC. 202. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

"(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

"(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 203. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) of the Internal Revenue Code of 1986 is amended by inserting "or equity held by the issuer (or any related party) in any other person" after "or a related party".

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) of such Code is amended by redesignating paragraphs (4) and (5) as

paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

"(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.".

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l) of such Code, as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

"(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.".

(d) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) of such Code is amended—

(1) by striking "or a related party" in the material preceding subparagraph (A) and inserting "or any other person", and

(2) by striking "or interest" each place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 204. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 of the Internal Revenue Code of 1986 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

"(a) IN GENERAL.—If—

"(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

"(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

"(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after the date of the enactment of this Act.

SEC. 205. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) of the Internal Revenue Code of 1986 (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

"Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

TITLE III—PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX

SEC. 301. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) of the Internal Revenue Code of 1986 (defining domestic) is amended to read as follows:

"(4) DOMESTIC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

"(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

"(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

"(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

"(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

"(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

"(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be

applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

"(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

"(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

"(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

"(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

"(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership or related foreign partnerships (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

"(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

"(v) SPECIAL RULES.—For purposes of this subparagraph—

"(I) a series of related transactions shall be treated as 1 transaction, and

"(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

"(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

"(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

"(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).

"(III) RELATED FOREIGN PARTNERSHIP.—A foreign partnership is related to a domestic partnership if they are under common control (within the meaning of section 482), or they shared the same trademark or tradename."

(b) EFFECTIVE DATES.—The amendment made by this section shall apply to taxable years beginning after the date of enactment of this Act.

PART B—TEXT OF AMENDMENT MADE IN ORDER TO H.R. 4281

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Employer Health Benefits Program Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. ESTABLISHMENT OF SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP).

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

"PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

"SEC. 801. ESTABLISHMENT OF PROGRAM.

"(a) IN GENERAL.—The Secretary shall establish, in accordance with this part, a program under which—

"(1) qualifying small employers (as defined in subsection (b)) are provided access to qualifying health insurance coverage (as defined in subsection (c)) for their employees, and

"(2) such employees may elect alternative forms of coverage offered by various health insurance issuers.

"(b) QUALIFYING SMALL EMPLOYER DEFINED; OTHER DEFINITIONS.—For purposes of this part:

"(1) QUALIFYING SMALL EMPLOYER.—

"(A) IN GENERAL.—The term 'qualifying small employer' means a small employer (as defined in paragraph (2)) that—

"(i) elects to offer health insurance coverage provided under this part to each employee who has been employed by that employer for 3 months or longer; and

"(ii) elects, with respect to an employee electing coverage under qualified health insurance coverage, to pay at least 50 percent of the total premium for qualifying health insurance coverage provided under this part.

"(B) ELECTIONS.—Elections under subparagraph (A) may be filed with the Secretary during the 180-day period beginning with the first enrollment period occurring under section 803 and during open enrollment periods occurring thereafter under such section. Such elections shall be filed in such form and manner as shall be prescribed by the Secretary.

"(C) PART-TIME EMPLOYMENT.—Under regulations of the Secretary, in the case of an employee serving in a position in which service is customarily less than 1,500 hours per year, the reference in subparagraph (A)(ii) to '50 percent' shall be deemed a percentage reduced to a percentage that bears the same ratio to 50 percent as the number of hours of service per year customarily in such position bears to 1,500.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a year under the program, an employer who employed an average of fewer than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of such year under the program.

"(3) SEHBP.—The term 'SEHBP' means the small employer health benefits program provided under this part.

"(c) QUALIFYING HEALTH INSURANCE COVERAGE.—For purposes of this part, the term 'qualifying health insurance coverage' means health insurance coverage that meets the following requirements:

"(1) The coverage is offered by a health insurance issuer.

"(2) The benefits under such coverage are equivalent to or greater than the lower level of benefits provided under the service benefit plan described in section 8903(1) of title 5, United States Code.

"(3) The coverage includes, with respect to an employee that elects coverage, coverage of the same dependents that would be covered if the coverage were offered under FEHBP.

"(4)(A) Subject to subparagraph (B), there is no underwriting, through a preexisting condition limitation, differential benefits, or different premium levels, or otherwise, with respect to such coverage for covered employees or their dependents.

"(B) The premiums charged for such coverage are community-rated for employees within any State and may vary only—

"(i) by individual or family enrollment, and

"(ii) to the extent permitted under the laws of such State relating to health insurance coverage offered in the small group market, on the basis of geography.

"(d) OTHER TERMS.—

"(1) HEALTH INSURANCE COVERAGE; HEALTH INSURANCE ISSUER; HEALTH STATUS-RELATED FACTOR.—The terms 'health insurance coverage', 'health insurance issuer', 'health status-related factor' have the meanings provided such terms in section 733.

"(2) SMALL GROUP MARKET.—The term 'small group market' has the meaning provided such term in section 2791(e)(5) of the Public Health Service Act (42 U.S.C. 300gg–91(e)(5)).

"(3) FEHBP.—The term 'FEHBP' means the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code.

"(e) TREATMENT OF PARTNERSHIPS AND SELF-EMPLOYED INDIVIDUALS.—For purposes of this part, and for purposes of applying section 3 to this part and to part 5 as it applies to this part, in any case in which qualifying health insurance coverage is, or is to be, provided under a plan, fund, or program to individuals covered thereunder—

"(1) if such plan, fund, or program is maintained by a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

"(2) if such plan, fund, or program is maintained by a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

"SEC. 802. CONTRACTS WITH QUALIFYING INSURERS.

"(a) IN GENERAL.—The Secretary shall enter into contracts with health insurance issuers for the offering of qualifying health insurance coverage under this part in the States in such manner as to offer coverage to employees of employers that elect to offer coverage under this part. Nothing in this part shall be construed as requiring the Secretary to enter into arrangements with all such issuers seeking to offer qualifying health insurance coverage in a State.

"(b) CONTINUED REGULATION.—Nothing in this part shall be construed as preempting State laws applicable to health insurance issuers that offer coverage under this part in such State.

"(c) COORDINATION WITH STATE INSURANCE COMMISSIONERS.—The Secretary shall coordinate with the insurance commissioners for the various States in establishing a process for handling and resolving any complaints relating to health insurance coverage offered under this part, to the extent necessary to augment processes otherwise available under State law.

"SEC. 803. ADDITIONAL CONDITIONS.

"(a) LIMITATION ON ENROLLMENT PERIODS.—The Secretary may limit the periods of times during which employees may elect coverage offered under this part, but such election shall be consistent with the elections permitted for employees under FEHBP and shall provide for at least annual open enrollment periods and enrollment at the time of initial eligibility to enroll and upon appropriate changes in family circumstances.

"(b) AUTHORIZING USE OF STATES IN MAKING ARRANGEMENTS FOR COVERAGE.—In lieu of the coverage otherwise arranged by the Secretary under this part, the Secretary may enter an arrangement with a State under which a State arranges for the provision of qualifying health insurance coverage to qualifying small employers in such manner as the Secretary would otherwise arrange for such coverage.

"(c) USE OF FEHBP MODEL.—The Secretary shall carry out the SEHBP using the model of the FEHBP to the extent practicable and consistent with the provisions of this part, and, in carrying out such model, the Secretary shall, to the maximum extent practicable, negotiate the most affordable and substantial coverage possible for small employers.

"SEC. 804. DISSEMINATION OF INFORMATION.

"The Secretary shall widely disseminate information about SEHBP through the media, the Internet, public service announcements, and other employer and employee directed communications.

"SEC. 805. SUBSIDIES.

"(a) EMPLOYER SUBSIDIES.—

"(1) ENROLLMENT DISCOUNT.—

"(A) IN GENERAL.—In the case of a qualifying small employer who is eligible under subparagraph (B), the portion of the total premium for coverage otherwise payable by such employer under this part shall be reduced by 5 percent. Such reduction shall not cause an increase in the portion of the total premium payable by employees.

"(B) EMPLOYERS ELIGIBLE FOR DISCOUNTS.—A qualifying small employer is eligible under this subparagraph if such employer employed an average of fewer than 25 employees on business days during the preceding calendar year.

"(2) EMPLOYER PREMIUM SUBSIDY.—

"(A) IN GENERAL.—The Secretary shall provide to qualifying small employers who are eligible under subparagraph (C) and who elect to offer health insurance coverage under this part a subsidy for premiums paid by the employer for coverage of employees whose individual income (as determined by the Secretary) is at or below 200 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section) for an individual.

"(B) SUBSIDY SCALED ACCORDING TO SIZE OF EMPLOYER.—The subsidy provided under subparagraph (A) shall be designed so that the subsidy equals, for any calendar year—

"(i) 50 percent of the portion of the premium payable by the employer for the coverage, in the case of eligible qualifying small employers who employ an average of fewer than 11 employees on business days during the preceding calendar year;

"(ii) 35 percent of the portion of the premium payable by the employer for the coverage, in the case of eligible qualifying small employers who employ an average of more than 10 employees but fewer than 26 employees on business days during the preceding calendar year; and

"(iii) 25 percent of the portion of the premium payable by the employer for the coverage, in the case of eligible qualifying small employers who employ an average of more than 25 employees but fewer than 51 employees on business days during the preceding calendar year.

"(C) EMPLOYERS ELIGIBLE FOR PREMIUM SUBSIDY.—A qualifying small employer is eligible under this subparagraph if such employer employed an average of fewer than 50 employees on business days during the preceding calendar year.

"(b) EMPLOYEE SUBSIDIES.—

"(1) IN GENERAL.—The Secretary shall provide subsidies to employees of qualifying small employers in any case in which the family income of the employee (as determined by the Secretary) is at or below 200 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section) for a family of the size involved.

"(2) AMOUNT OF SUBSIDY.—Such subsidies shall be in an amount equal to the excess of the portion of the total premium for coverage otherwise payable by the employee under this part for any period, over 5 percent of the family income (as determined under paragraph (1)(A)) of the employee for such period.

"(3) COORDINATION OF SUBSIDIES.—Notwithstanding paragraph (1), under regulations of the Secretary, an employee may be entitled to subsidies under this subsection for any period only if such employee is not eligible for subsidies for such period under any Federal or State health insurance subsidy program (including a program under title V, XIX, or XXI of the Social Security Act). For purposes of this paragraph, an employee is 'eligible' for a subsidy under a program if such employee is entitled to such subsidy or would, upon filing application therefore, be entitled to such subsidy.

"(4) AUTHORITY TO EXPAND ELIGIBILITY.—The Secretary may, to the extent of available funding, provide for expansion of the subsidy program under this subsection to employees whose family income (as defined by the Secretary) is at or below 300 percent of the poverty line (as determined under paragraph (1)).

"(c) LIMITATIONS.—For purposes of this section—

"(1) RESTRICTIONS ON TREATMENT OF EMPLOYMENT RELATIONSHIP.—Section 801(e) shall not apply.

"(2) REQUIREMENT OF MULTIPLE EMPLOYEES.—A small employer shall not be treated as a qualifying small employer with respect to an applicable year unless the employer employs at least 2 employees on the first day of such year.

"(d) PROCEDURES.—The Secretary shall establish by regulation applications, methods, and procedures for carrying out this section, including measures to ascertain or confirm levels of income.

"SEC. 806. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated, for the period beginning with fiscal year 2005 and ending with fiscal year 2014, $50,000,000,000 to carry out this part, including the establishment of subsidies under section 805.".

(b) REPORT ON OFFERING NATIONAL HEALTH PLANS.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall report to Congress the Secretary's recommendations regarding the feasibility of offering national health plans under part 8 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as added by subsection (a).

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

"PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

"Sec. 801. Establishment of program.
"Sec. 802. Contracts with qualifying insurers.
"Sec. 803. Additional conditions.
"Sec. 804. Dissemination of information.
"Sec. 805. Subsidies.
"Sec. 806. Authorization of appropriations.".

Amend the title so as to read: "A Bill to provide for the establishment in the Department of Labor of a Small Employer Health Benefits Program.".

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